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Third-Party Plaintiffs KG HOLDINGS, LLC,
QK HOTEL, LLC, and OR HOTEL, LLC

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

SPORTS SHINKO CO., LTD.,

Plaintiff,

vs.

QK HOTEL, LLC, et al.,

Defendants,

and

FRANKLIN K. MUKAI, et al.,

Third-Party Plaintiffs,

vs.

SPORTS SHINKO (USA) CO., LTD.,

et al.,

Third-Party Defendants,

and

SPORTS SHINKO (HAWAII) CO.,

LTD., et al.,

Third-Party Defendants/
Counterclaimants,

CV 04-00124 BMK

CV 04-00127 BMK

CONSOLIDATED CASES

KG PARTIES' SUPPLEMENTAL
FILING RE SECOND AMENDED
MOTION TO COMPEL
DISCOVERY AND TO SET
SCHEDULING ORDER;
CERTIFICATE OF SERVICE

vs.
QK HOTEL, LLC, et al.,
Third-Party Counterclaim
Defendants.
AND CONSOLIDATED CASE

**KG PARTIES' SUPPLEMENTAL FILING RE SECOND AMENDED MOTION
TO COMPEL DISCOVERY AND FOR A SCHEDULING ORDER**

At the request of the Sports Shinko Parties, Defendants, Counterclaimants and Third-Party Plaintiffs KG Holdings, LLC, QK Hotel, LLC and OR Hotel, LLC ("KG Parties") hereby file the attached letter to United States Magistrate Judge Barry M. Kurren dated July 20, 2007 in the record of these consolidated cases.

DATED: Honolulu, Hawaii, July 20, 2007.

/s/ Robert A. Marks

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July 20, 2007

VIA HAND DELIVERY

The Honorable Barry M. Kurren
United States Magistrate Judge
300 Ala Moana Boulevard, Suite C-229
Honolulu, Hawaii 96850

Re: Sports Shinko Co. Ltd. v. QK Hotel, LLC,
D. Hawaii Cv. 04-00124 BMK and consolidated case

Dear Judge Kurren:

Counsel for the Sports Shinko parties has requested that I “supplement the record” respecting statements I made in connection with the KG Parties’ Second Motion to Compel and otherwise.

In this regard, I have represented to the Court that the Sports Shinko parties have not produced certain documents necessary to prove the alleged debt in issue in the cases. Counsel for Sports Shinko recently found certain basic documents related to the debt among documents technically owned by, and in the possession of, the KG Parties. These are documents that the Sports Shinko parties have always had access to.¹

In late 2005, the subject of the Sports Shinko documents in the KG Parties’ possession first came up in discussions between counsel. I took the position that I would not review these Sports Shinko documents in deference to the possible presence of privileged materials, and also on the mistaken assumption that the documents would likely not be relevant to the issues in the litigation.

This case presents an unusual circumstance where one party’s records are technically owned by its litigation adversary, and this unusual problem has resulted. Last week, I informed

¹ Under the Purchase and Sale Agreement (“PSA”) between certain Sports Shinko parties and KG, in early 2002, the KG Parties acquired ownership of the Sports Shinko-era “books and records” of the golf courses and hotels. Under the PSA, the Sports Shinko companies are entitled to “reasonable access to, and ...[are] permitted to make copies of, such books and records, as may be required ... for ... litigation ...” PSA ¶ 1(h).

The Honorable Barry M. Kurren
July 20, 2007
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Sports Shinko's counsel that KG is willing to return ownership of the documents to them, provided they don't indiscriminately dump them back on KG in discovery.

Had I known that the Sports Shinko records nominally owned by KG and in its possession included relevant documents, I would have so informed counsel for Sports Shinko, and to that extent, the discovery dispute before the Court would have been narrowed, but not averted. I apologize to the Court and counsel for any misunderstanding related to this issue.

Very truly yours,

PRICE OKAMOTO HIMENO & LUM

A handwritten signature in black ink, appearing to read "R. Marks", written over the printed name.

Robert A. Marks

c: Client
Bruce Wakuzawa, Esq.\Jason H. Kim, Esq.
William Bordner, Esq.\John Reyes-Burke, Esq.

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SPORTS SHINKO CO., LTD.,

Plaintiff,

vs.

QK HOTEL, LLC, et al.,

Defendants,

and

FRANKLIN K. MUKAI,

Third-Party Plaintiff,

vs.

SPORTS SHINKO (USA) CO., LTD.,
et al.,

Third-Party Defendants,

and

SPORTS SHINKO (HAWAII) CO.,
LTD., et al.,

Third-Party Defendants/
Counterclaimants,

vs.

QK HOTEL, LLC, et al.,

Third-Party Counterclaim
Defendants.

AND CONSOLIDATED CASE

CV 04-00124 ACK-BMK

CV 04-00127 ACK-BMK

CONSOLIDATED CASES

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of KG PARTIES'

SUPPLEMENTAL FILING RE SECOND AMENDED MOTION TO COMPEL

DISCOVERY AND TO SET SCHEDULING ORDER was served electronically through CM/ECF on the following on July 20, 2007:

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Attorney for Defendant
FRANKLIN K. MUKAI

DATED: Honolulu, Hawaii, July 20, 2007.

/s/ Robert A. Marks

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